

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

**ALICIA SMITH, CAROLINA BOURQUE,
EMMA BURKEY, CHRISTOPHER CODY
FLINT, MICHELLE ZIMMERMAN, PhD,
ERIN RHODES, JESSICA KROGMEIER,
LORIN JEPPSEN, and REACT19, INC.,**

Plaintiffs,

-vs.-

**UNITED STATES OF AMERICA, UNITED
STATES HEALTH RESOURCES AND
SERVICES ADMINISTRATION, UNITED
STATES DEPARTMENT OF HEALTH AND
HUMAN SERVICES, and JOHN DOES 1-3,**

Defendants.

Case No. 3:23-cv-01425

Judge Elizabeth E. Foote

Magistrate Kayla D. McClusky

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs, Alicia Smith, Carolina Bourque, Emma Burkey, Christopher Cody Flint, Michelle Zimmerman, PhD, Erin Rhodes, Jessica Krogmeier, Lorin Jeppsen, and React19, Inc. (together “**Plaintiffs**”), by their undersigned counsel, hereby move this Court for a preliminary injunction against Defendants United States of America, United States Health Resources and Services Administration, United States Department of Health and Human Services, and John Does 1-3 (together “**Defendants**”). In support of this Motion, Plaintiffs rely upon the accompanying Memorandum of Law, which is attached hereto and incorporated by reference herein.

As set forth more fully in the attached Memorandum, Plaintiffs are clearly entitled to relief because the Countermeasures Injury Compensation Program (“**CICP**”), as administered in whole or in part by the Defendants, violates Plaintiffs’ and others’ rights under the Fifth and Seventh

Amendments to the United States Constitution because CACP: (i) fails to provide, among other things, the minimum procedural due process rights of notice and opportunity to be heard at a meaningful time and in a meaningful manner; (ii) provides no meaningful compensation for injuries; and (iii) violates their rights to a jury trial. Plaintiffs respectfully request that this Court preliminarily enjoin Defendants from enforcing those provisions of the Public Readiness and Emergency Preparedness Act of 2005 (“**PREP Act**”), Pub. L. No. 109-148, 42 U.S.C. §§ 247d-6d, 247d-6e (2005), which create the scheme providing liability protection and a compensation process for COVID-19 vaccines, including, but not limited to, 42 U.S.C. §§ 247d-6d and 247d-6e, until the federal government: (i) permits all COVID-19 vaccine injury claims to be adjudicated in Vaccine Court regardless of date of injury or prior filing in CACP; and/or (ii) reforms CACP to come into compliance with Constitutional requirements, including *inter alia* the minimal due process protections listed in Plaintiffs’ Complaint and Memorandum.

WHEREFORE, Plaintiffs respectfully request that (1) the Court set this matter for a hearing, and (2) thereafter enter declaratory and injunctive relief prohibiting Defendants from enforcing those provisions of the PREP Act, which create the scheme providing liability protection and a compensation process for COVID-19 vaccines, including, but not limited to, 42 U.S.C. §§ 247d-6d and 247d-6e, until such time as Defendants: (i) permit all COVID-19 vaccine injury claims to be adjudicated in Vaccine Court regardless of date of injury or prior filing in CACP; and/or (ii) provide constitutional protections as set forth more fully in Plaintiffs’ Complaint and Memorandum of Law.

Dated: October 31, 2023

Respectfully submitted,

/s/ Charlotte Y. Bergeron

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CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2023 I presented the foregoing *Plaintiffs' Motion for Preliminary Injunction* to the Clerk of Court for filing and uploading to the CM/ECF system which will send notification of such filing to all parties or counsels of record, and I hereby certify that I have mailed by United States Postal Service this filing to the following currently non-CM/ECF participants:

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